FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL WRIT PETITION NO. 170 OF 2005.

Smt. Rajani Salil Nerurkar. .. Petitioner.
vs.
Salil Suresh Nerurkar & ors. .. Respondents.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	:	Court's or Judge's orders

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Shri C.R. Sonawane for the petitioner.

Shri M.B. Gawade for respondent Nos.1 to 3.

Shri D.P. Adsule, A.P.P. for the State.

CORAM: V.M. KANADE,J.

DATED: 25.1.2005.

P.C.:

. Heard learned Counsel appearing on behalf of the petitioner and the learned Counsel for the respondents.

2. This petition is filed by the wife for quashing the criminal complaint filed by her under section 498-A of the Indian Penal Code against her husband-respondent No.1, father-in-law respondent No.2 and

mother-in-law- respondent No.3. It is contended by the petitioner that the parties have filed consent terms in the Family Court at Bandra and in that consent terms she has stated that she does not wish to proceed with the complaint which is filed against the respondents herein. It is submitted that decree for divorce was granted by the trial Court and consent terms in respect of application for maintenance also has been passed by the Family Court. It is submitted that the petitioner has given undertaking to the Family Court that she would not withdraw an amount of Rs.75,000/- deposited by her husband- respondent No.1 herein, till the complaint under section 498-A of the I.P.C. is disposed of.

3. In the present case, petitioner has filed this petition for quashing the complaint filed by her against the respondents. In view of the subsequent events which took place parties have filed consent terms in the Family Court at Bandra and pursuant to the said consent terms decree for divorce by mutual consent

has been granted by the Family Court. Respondent No.1 has agreed to pay Rs. 75,000/- as lumpsum alimony to the petitioner herein, towards full and final settlement of her claim for maintenance. In the consent terms, petitioner has stated that she has received her ornaments and other articles from her husband-respondent No.1 herein.

4. An application was filed by the petitioner and respondent No.1 in the Court of Additional Chief Metropolitan Magistrate, Vth Court, Dadar, for compounding the said complaint. The said application was, however, rejected by the learned Magistrate on the ground that offence under section 498-A is not compoundable in view of provisions of section 320 of the Code of Criminal Procedure. Petitioner has filed this petition for quashing the complaint under section 482 of the Cri.P.C. read with Article 227 of the Constitution of India.

5. The Apex Court in the case of **B.S. Joshi & ors. vs. State of Haryana & anr.**

reported in 2003 Cri.L.J. 2028 has observed that inherent powers of the High Court under section 482 of the Cri.P.C. are not curbed or limited by virtue of provisions of section 320 of the Cri.P.C. The Supreme Court has, however, observed that while exercising this jurisdiction under section 482, for quashing complaint which is filed under section 498-A of the I.P.C., the High Court has to be satisfied that the dispute between the parties has been resolved amicable and secondly that the settlement arrived at between the parties is genuine and both the parties are living happily after dissolution of the marriage.

6. In the present case, parties have obtained a decree for divorce by mutual consent. Consent terms have been filed wherein the respondent No.1 has agreed to pay lump sum maintenance and has deposited an amount of Rs. 75,000/- towards lump sum alimony. Receipt of payment to petitioner is annexed to the petition. Petitioner has received her ornaments and other articles from respondent No.1 and

she has stated that she has no claim in respect of Stridhan from the respondents. In view of these facts, in my view, this is a fit case where complaint filed by the petitioner is liable to be quashed and set aside.

7. The Apex Court in para 15 of the judgment in the case of B.S. Joshi (cited supra) has observed as under:

> " In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code."

The petition is, therefore, allowed. Criminal Case No. 144/P/2002 arising out of C.R. No. 520/2001 for offence punishable under section 498-A of the I.P.C. registered at Dadar Police Station, Mumbai, is quashed and set aside.

Petition is allowed in the above terms.

8. In view of the above order respondent Nos. 1 to 3 are entitled to withdraw the amount of Rs.9,000/- which is deposited cash amount of bail as each of the respondent has paid Rs.3,000/- vide receipt Nos.5643296,5643297 and 5643295 dated 22.12.2001.

9. Parties to act on authenticated copy of this order.